

HOUSE BILL REPORT

E2SSB 5937

As Passed House:
February 28, 2024

Title: An act relating to supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses.

Brief Description: Supporting crime victims and witnesses by promoting victim-centered, trauma-informed responses.

Sponsors: Senate Committee on Ways & Means (originally sponsored by Senators Dhingra, Braun, Hasegawa, Keiser, Kuderer, Liias, Lovelett, Lovick, Nguyen, Nobles, Stanford, Trudeau, Valdez, Wellman and Wilson, C.).

Brief History:

Committee Activity:

Community Safety, Justice, & Reentry: 2/19/24, 2/20/24 [DP];
Appropriations: 2/23/24, 2/26/24 [DP].

Floor Activity:

Passed House: 2/28/24, 94-0.

Brief Summary of Engrossed Second Substitute Bill

- Modifies the eligibility for benefits, reimbursement for travel, and state payment of forensic examinations under the Crime Victims' Compensation Program.
- Expands the rights of victims, survivors of victims, and witnesses of crimes.
- Removes the statute of limitations for Rape committed by first responders who use their position to facilitate the commission of the offense.
- Modifies the elements of Rape in the first degree.
- Provides for the confidentiality of a depiction of a victim or a victim's

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

genitals that results from a sexual assault medical forensic examination.

- Establishes the Statewide Forensic Nurse Coordination Program.
- Grants minors age 13 or older the right to consent to forensic examinations related to sexual assault.

HOUSE COMMITTEE ON COMMUNITY SAFETY, JUSTICE, & REENTRY

Majority Report: Do pass. Signed by 9 members: Representatives Goodman, Chair; Simmons, Vice Chair; Mosbrucker, Ranking Minority Member; Griffey, Assistant Ranking Minority Member; Davis, Farivar, Fosse, Graham and Ramos.

Staff: Lena Langer (786-7192).

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: Do pass. Signed by 29 members: Representatives Ormsby, Chair; Bergquist, Vice Chair; Gregerson, Vice Chair; Macri, Vice Chair; Corry, Ranking Minority Member; Chambers, Assistant Ranking Minority Member; Connors, Assistant Ranking Minority Member; Couture, Assistant Ranking Minority Member; Berg, Callan, Chopp, Davis, Fitzgibbon, Harris, Lekanoff, Pollet, Riccelli, Rude, Ryu, Sandlin, Schmick, Senn, Simmons, Slatter, Springer, Stokesbary, Stonier, Tharinger and Wilcox.

Staff: Lily Smith (786-7175).

Background:

Crime Victims' Compensation Program.

The Crime Victims' Compensation Program (CVCP), within the Department of Labor and Industries (L&I), assists victims with costs associated with violent crimes. To qualify for benefits, a person must have:

- sustained a physical injury or mental health trauma as a result of a gross misdemeanor or felony crime in Washington;
- reported the crime to law enforcement within one year from the date of the crime or within one year from when it reasonably could have been reported; and
- applied for benefits within three years of the crime being reported to law enforcement or the date the rights of the beneficiaries accrued, or within five years in certain circumstances.

A person is not eligible for benefits if:

- the injury was the result of consent, provocation, or incitement by the victim;
- the injury was sustained while the victim was committing or attempting to commit a

- felony;
- the injury was sustained while the victim was incarcerated;
- the person making the claim refused to reasonably cooperate with state or local law enforcement agencies to apprehend and convict the perpetrator of the crime giving rise to the claim;
- a victim has been convicted of a felony offense that is a violent offense or crime against a person within five years preceding the criminal act giving rise to the claim, or if a person is convicted of such a felony offense after the criminal act; or
- a victim has not completely satisfied all legal financial obligations owed.

The CVCP is required to pay for sexual assault forensic examinations and forensic examinations for victims of domestic violence assault involving nonfatal strangulation. These exams are conducted at no cost to victims, and the CVCP directly reimburses medical facilities for these services.

Rights of Crime Victims, Survivors of Victims, and Witnesses.

The Washington Constitution grants crime victims basic and fundamental rights, and additional rights are enumerated in statute. A reasonable effort must be made to ensure that victims, survivors of victims, and witnesses of crimes have access to such rights in adult and juvenile criminal proceedings and sexually violent predator commitment proceedings.

Statute of Limitations.

A statute of limitations is a time limit for initiating prosecution after a crime is committed. Once the applicable statute of limitations has expired, a prosecutor is barred from bringing charges against the alleged perpetrator. Statutes of limitations vary depending on the crime.

Evidence of a Victim's Past Sexual History.

In a prosecution for a sex offense, evidence of a victim's past sexual behavior is generally inadmissible to prove the victim's consent or attack the victim's credibility. In a prosecution for Rape, Trafficking, or an offense related to Commercial Sexual Abuse of a Minor, such evidence is inadmissible to attack the credibility of the victim but is admissible on the issue of consent if certain procedures are followed, except when prohibited in the underlying criminal offense.

Rape in the First Degree.

A person is guilty of Rape in the first degree when the person engages in sexual intercourse with another person by forcible compulsion where the perpetrator or an accessory:

- uses or threatens to use a deadly weapon or what appears to be a deadly weapon;
- kidnaps the victim;
- inflicts serious physical injury, including but not limited to physical injury which renders the victim unconscious; or
- feloniously enters into the building or vehicle where the victim is situated.

Rape in the first degree is a class A felony.

Sexual Assault Forensic Examinations.

A person who has been the victim of a sexual assault may undergo a forensic examination for the purpose of collecting evidence left behind during the assault. The doctor or nurse conducting the examination preserves the evidence using a sexual assault kit.

Summary of Bill:

Crime Victims' Compensation Program.

To be eligible for CVCP benefits, the person making a claim for the benefits must reasonably cooperate with law enforcement unless the Director of L&I determines that such cooperation may be impacted due to a victim's age, physical condition, psychological state, cultural or linguistic barriers, or any other health or safety concern that jeopardizes the victim's wellbeing.

Crime victims must be reimbursed for reasonable roundtrip travel expenses for medical examinations and interviews requested by L&I. Injured crime victims must be reimbursed for reasonable transportation costs to and from the place of injury to a place of treatment, and from the place of treatment to a reasonable location of the victim's choice.

The state must pay the cost of a forensic examination, which occurs in the state, of the victim of a sexual assault or domestic violence assault involving nonfatal strangulation for the purposes of gathering evidence for possible prosecution, regardless of whether the assault occurred in the state or elsewhere in the United States.

L&I must attempt to enter into an agreement with another state for the reimbursement to the Crime Victims' Compensation Fund if Washington pays the cost of a forensic examination of sexual assault or domestic violence assault involving nonfatal strangulation for a nonresident who is a victim of such an assault that occurred in another state. After an agreement is reached with another state, L&I must report to the other state the costs incurred for the forensic examination. L&I must ensure that no information related to protected health care services is provided to any state whose law is against the state's public policy on such services.

Rights of Crime Victims, Survivors of Victims, and Witnesses.

The intent of the statutory chapter establishing the rights of victims, survivors of victims, and witnesses of crimes is expanded to include the Legislature's intent to ensure that all victims and witnesses are afforded access to justice to participate in criminal justice proceedings, including the opportunity to participate in and attend court hearings in person or remotely, including by video or other electronic means.

Crime victims' rights are extended to include victims, survivors of victims, and witnesses of crimes pertaining to criminally insane civil commitment proceedings. Victims of violent

offenses, domestic violence, and sex offenses must be informed by local law enforcement agencies or the prosecuting attorney when:

- charges have been filed; and
- a defendant has been found not competent to stand trial and referred for restoration services.

Victims of violent offenses, domestic violence, and sex offenses have the right to attend court proceedings or required interviews in person or remotely, dependent on local jurisdiction resources.

Statute of Limitations.

The statute of limitations for Rape committed by first responders who use their position to facilitate the commission of the offense is removed.

Evidence of a Victim's Past Sexual History.

Written pretrial motions concerning the relevancy of evidence of a victim's past sexual behavior on the issue of consent must be made in advance of the trial date. A court must order a hearing before the jury is empaneled to determine the relevancy of the evidence. The victim, victim's attorney, or a lawful representative of the victim may assert and seek enforcement of the required procedures under the statute relating to evidence of a victim's past sexual behavior.

Rape in the First Degree.

The elements of Rape in the first degree are modified. The means of committing the offense are expanded to include if the person engages in sexual intercourse with another person:

- by forcible compulsion where the perpetrator or an accessory feloniously enters where the sexual intercourse occurs; or
- after the perpetrator or an accessory knowingly furnishes the victim with a legend drug, controlled substance, or controlled substance analog without the victim's knowledge and consent which renders the victim incapable of consent to sexual intercourse due to physical helplessness or mental incapacitation.

Sexual Assault Forensic Examinations.

A minor age 13 or older may consent to:

- a sexual assault forensic examination conducted for the purposes of gathering evidence for possible prosecution; and
- hospital, medical, and surgical care for any sexually transmitted disease or suspected sexually transmitted disease as a result of a sexual assault.

Depictions of a Victim.

In a criminal proceeding, depictions of a victim or a victim's genitals created during a sexual assault medical forensic examination may not be shown in open judicial proceedings and must be filed as a confidential document within a court file. An expert witness may

provide testimony on such a depiction.

A procedure is created for sealing a depiction of a victim or a victim's genitals that was created during a sexual assault medical forensic examination if the depiction was marked as an exhibit in a criminal proceeding. If the criminal proceeding results in a conviction, the exhibit containing the depiction must be destroyed five years after judgment is final if there is no collateral attack pending. If the criminal proceeding ends in a mistrial, the exhibit must be maintained or returned to the law enforcement agency that investigated the criminal charges for safekeeping until the matter is set for retrial. If the criminal proceeding ends in an acquittal, the exhibit must be returned to the law enforcement agency that investigated the criminal charges for either safekeeping or destruction.

Juvenile Court-Issued Protection Orders.

The Department of Children, Youth, and Families must require a juvenile released from juvenile rehabilitation to refrain from violating any civil protection orders issued by a juvenile court.

Statewide Forensic Nurse Coordination Program.

Subject to appropriations, the Statewide Forensic Nurse Coordination (SFNC) Program is established. The SFNC must:

- provide technical assistance to adult, adolescent, and pediatric sexual assault nurse examiner programs and forensic nurse examiner programs;
- identify and alleviate barriers faced by hospitals relating to creating, maintaining, or operating adult, adolescent, or pediatric sexual assault nurse examiner programs or forensic nurse examiner programs;
- conduct a statewide needs assessment of adult, adolescent, and pediatric sexual assault nurse examiner programs and forensic nurse examiner programs;
- provide and maintain centralized resources for adult, adolescent, and pediatric sexual assault nurse examiners and forensic nurse examiners;
- oversee the supply, distribution, and content of standardized sexual assault kits;
- develop and update standards of care for forensic exams and documentation;
- assess and maintain standards for forensic nurse training curricula for ongoing and didactic training, including preceptorship, by:
 - providing technical assistance to promote consistent trainings across the state with variances as needed;
 - providing information on trauma-informed and cultural competency standards; and
 - facilitating surveys and other mechanisms to provide forensic exam patients the ability to give feedback on the patients' experiences that can be used to enhance forensic nurse training standards;
- coordinate statewide forensic nurse trainings;
- develop standardized forensic nurse training videos for hospitals and perform on-site trainings at hospitals;
- develop plans to ensure statewide coverage and availability of adult, adolescent, and

- pediatric sexual assault nurse examiners and forensic nurse examiners;
- maintain and collect data on the availability of adult, adolescent, and pediatric sexual assault nurse examiners and forensic nurse examiners;
- coordinate with victim advocacy services;
- provide organizational and capacity building support to adult, adolescent, and pediatric sexual assault nurse examiner programs and forensic nurse examiner programs; and
- integrate resources for victims of sexual assault into existing local or state referral hotlines.

Appropriation: None.

Fiscal Note: Available. New fiscal note requested on February 29, 2024.

Effective Date: The bill takes effect on July 1, 2024.

Staff Summary of Public Testimony (Community Safety, Justice, & Reentry):

(In support) Many aspects of the bill improve the state's response to victims of sexual assault. This bill helps to reduce barriers for survivors of domestic violence seeking access to the CVCP, especially the barriers for survivors seeking forensic examinations when the violence against them occurred in other states. There are several programs for survivors of domestic violence and sexual assault along the border between Washington and Idaho. Survivors fleeing violence from other states deserve the same level of care and coverage.

There is a need for the SFNC Program. Nationally, only one in five hospitals provides forensic examinations to survivors of sexual assault. Survivors of sexual assault in Washington are routinely turned away from emergency rooms or left waiting for hours for care. In 2020 the hospitals in the state that provide forensic examinations ran out of sexual assault kits. In 2019 the Legislature required hospitals to inform survivors within two hours if a forensic exam was not available. There is currently no oversight or education over this mandate from the Legislature. The SFNC Program is necessary to identify where services are available, streamline training, identify gaps in the system, and support the nurses currently providing forensic examinations.

Washington has taken significant steps in developing trauma-informed and victim-centered legal systems. This bill removes the statute of limitations for Rape committed by first responders. The bill requires the protection of medical images that result from sexual assault forensic examinations and provides better protections of a victim's sexual history. This bill makes it clear that being a victim of Rape should not open one's entire life to scrutiny if a case is prosecuted. The bill makes the age of consent for forensic exams 13 years old, which is particularly important when the victim was assaulted by a parent or legal guardian or the perpetrator of the assault is being protected by a parent or legal guardian. Sections nine and 10 of the bill strengthen victims' rights to have a voice and participate in

their court cases by ensuring that victims can participate in meetings and hearings remotely. This bill acknowledges the trauma that survivors have experienced and helps alleviate further distress.

(Opposed) None.

Staff Summary of Public Testimony (Appropriations):

(In support) This bill should be supported as it expands medical care for people coming from other states, as the place of the crime should not matter. There are barriers and risks in making reports and creating remote options is good for accessibility. There is a need for forensic nurse examiners. This bill streamlines eligibility for benefits, expands protections, ensures consent for younger people, and increases system coordination. This bill is victim-centered and trauma-informed, and a critical investment for the safety and dignity of survivors.

(Opposed) None.

Persons Testifying (Community Safety, Justice, & Reentry): Kate Krug, King County Sexual Assault Resource Center; Riddhi Mukhopadhyay, Sexual Violence Law Center; Em Stone, Washington State Coalition Against Domestic Violence; and Leah Griffin, Sexual Assault Forensic Examination Best Practices Working Group.

Persons Testifying (Appropriations): Mollie Montague, Rape Abuse and Incest National Network; and Em Stone, Washington State Coalition Against Domestic Violence.

Persons Signed In To Testify But Not Testifying (Community Safety, Justice, & Reentry): None.

Persons Signed In To Testify But Not Testifying (Appropriations): None.